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ABSTRACT

The most frequently cited causes for teacher dismissal are immorality, incompetence, and insubordination. The discussion in this chapter concerning these three causes encompasses the general judicial principles found in teacher dismissal cases. The discussion of dismissal for immorality focuses on three controversial areas of litigation: sexual misconduct with students, sexual misconduct with nonstudents, and teacher profanity in the classroom. A major consideration for the judiciary in allegations of immoral conduct is proof of a nexus between the conduct in question and fitness to teach. In dismissing a tenured employee for incompetence, school boards should apply the following evidentiary guidelines: (1) a comparative standard of performance, (2) substantial evidence to justify incompetence, (3) a documented pattern of incompetent behavior, (4) determination that behavior is irremediable, (5) a reasonable period for remediation, and (6) evidence that employee's conduct has an adverse effect on the operation of the school. In cases of dismissal for insubordination, school boards are generally required to demonstrate the presence of a persistent willful violation of a reasonable rule or order from a proper authority. Substantial evidence must support such a charge, and the action must be based on a legitimate school concern. (TE)

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Good Cause Basis for Dismissal of Education Employees

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All states have some statutory provisions regarding teacher dismissals, but few cite exactly the same causes. The reasons specified for dismissal vary from the very specific to the very general, with a great deal of ambiguity and overlap among the causes. The most frequently cited causes for teacher dismissal are immorality, incompetence, and insubordination. The discussion in this chapter concerning these three causes encompasses the general judicial principles found in teacher dismissal cases.

Immorality

School boards in 38 states are statutorily authorized to dismiss a teacher on a direct charge of immorality and/or moral turpitude. No other single charge is as widespread in dismissal statutes. In the remaining 12 states statutory grounds of good or just cause, unfitness to teach, or unprofessional conduct may be used to dismiss a teacher for immoral conduct. While legislatures have chosen to cite immorality as a cause for dismissal, they have been reluctant to define the term or to discuss its ap-

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plication to specific conduct. Consequently, the definition of immorality and application to specific conduct have been left to the judicial system. As a 1952 Pennsylvania decision pointed out: "Exact definitions of such abstract terms [as immorality] are obviously quite impossible."¹ Because of the imprecise nature of the term, school boards, when contemplating dismissal of personnel on such charges, need to be aware of what the courts have said about conduct considered to be immoral.

A survey of relevant cases reveals that actions that form the basis for dismissals based on immorality generally fall into one or more of the following discrete categories of conduct:

1. Heterosexual misconduct with students
2. Heterosexual misconduct with nonstudents
3. Homosexuality
4. Nonsexual misconduct with students
5. Physical abuse of students
6. Classroom discussion or use of materials that are sexual in nature
7. Use of profanity
8. Misconduct involving drugs
9. Misconduct involving alcohol
10. Other criminal misconduct
11. Misappropriation of funds
12. Cheating
13. Lying

While the categories of conduct which the courts have construed as immoral cover a broad range of behavior, certain guidelines can be identified that the courts will generally apply to cases involving a dismissal for immorality.

Sexual Misconduct with Students. Sexual misconduct with students may not be engaged in by teachers, and such misconduct justifies removal of the teacher from the classroom. No other category of conduct used as a basis for immorality dismissals has generated such unanimous disapproval in court decisions as sexual misconduct by a teacher with students. A Washington court observed in 1973 that "[i]t is difficult to conceive of circumstances which would more clearly justify the action of the Board than the sexual misconduct of a teacher with a minor student in the district."² A 1982 decision in the same state held that sexual misconduct with students "is inherently harmful to the student-teacher relationship."³

The dismissal of a Colorado teacher was upheld where it was found that he engaged in mutual tickling of the genitals, sexually suggestive dialogue, and other sexually related horseplay with female students on a field trip. The court responded to the teacher's argument that the ac-

tivities were good-natured and a positive influence by stating that "[i]t is difficult to conceive of a single positive aspect that such behavior might have in an educational context."⁴

A 62-year-old history teacher with 18 years of satisfactory service in the Texas schools was dismissed because of an improper sexual relationship with one of his students. Concerning his immediate removal from the classroom and his dismissal, the Fifth Circuit Court of Appeals said, "a male eighth-grade teacher charged with sexual misconduct with his teenage female students should not be in contact with them in the teaching process."⁵

The fact that a student's parents are aware of, or even encourage, the relationship between their child and a teacher may not be enough to mitigate a finding of immorality. A Washington junior high school counselor met a high school girl through social contacts with her parents. With the parents' approval the two began to date. The girl became pregnant and the school administration learned that the counselor was the father of the child. The teacher was questioned and admitted the truth of the allegations. Shortly thereafter the couple was married but the counselor was dismissed, nevertheless. The counselor appealed the dismissal but the court upheld the action of the school board, reasoning as follows:

While the argument that "immorality" *per se* is not a ground for discharge without a showing of adverse effect upon "fitness to teach" or upon the school has merit, we decline to set such a requirement where the sexual misconduct complained of directly involved a teacher and a minor student. In our view, the School Board may properly conclude in such a situation that the conduct is inherently harmful to the teacher-student relationship, and thus to the school district.⁶

Sexual Misconduct with Nonstudents. Private, discreet sexual conduct is viewed in terms of its adverse effect on the school and on the teacher's ability to perform the teaching function. A divorced Nebraska teacher was dismissed because she had, at various times, allowed single men, single women, or couples to stay at her apartment overnight. In overturning the dismissal, a federal court ruled that for the board "to justify a dampening of the rights of assembly or association and privacy the state . . . must show that the termination . . . was caused by conduct which 'materially and substantially' interfered with the school's work."⁷

A South Dakota school board that sought to dismiss a teacher for cohabitation presented as evidence a petition condemning the teacher's action, as well as evidence of adverse student reaction and general controversy within the school and community because of the teacher's living arrangements. The court upheld the dismissal, ruling that "it would seem reasonable for the School Board to conclude that controversy be-

tween the plaintiff and the parents and the community members of this locale would make it difficult for the teacher to maintain the proper educational setting in her classroom."⁹

In 1969 the California Supreme Court ruled that a one-week, private homosexual relationship was not sufficient reason to revoke a teacher's certificate. The court reasoned that the definition of a term such as immorality or moral turpitude is so broad that the term must be related "to the issue of whether, on the job, the employee had disqualified himself."⁹ The court provided a check list of factors that may be used in determining the adverse effect on a teacher's fitness:

In determining whether the teacher's conduct thus indicated unfitness to teach the board may consider such matters as the likelihood that the conduct may have adversely affected students or fellow teachers, the degree of such adversity anticipated, the proximity or remoteness in time of the conduct, the type of teaching certificate held by the party involved, the extenuating or aggravating circumstances, if any, surrounding the conduct, the praiseworthiness or blameworthiness of the motives resulting in the conduct, the likelihood of the recurrence of the questioned conduct, and the extent to which disciplinary action may inflict an adverse or chilling impact upon the constitutional rights of the teacher involved or other teachers.¹⁰

A board's ability to prove an adverse effect on the teacher's ability to function, using the factors outlined by the court, is of extreme importance in dismissals focusing on private conduct. The courts have repeatedly stressed that even though a teacher occupies a special position and "as a consequence of that elevated status, a teacher's actions are subject to much greater scrutiny than that given to the activities of the average person,"¹¹ the basis for dismissal must rest on a teacher's ability to perform the teaching function. As one Ohio court stated: "The private conduct of a man, who is also a teacher, is a proper concern to those who employ him only to the extent that it mars him as a teacher, who is also a man."¹²

Teacher Profanity in the Classroom. Speech that is profane, sexual, or vulgar and cannot be shown to have a valid educational purpose is not constitutionally protected and may serve as a basis for dismissal. Generally, a teacher enjoys a measure of freedom in classroom instruction. However, when a teacher chooses to discuss topics of a sexual nature not related specifically to the course of study, the conduct may be questioned.¹³ For example, when a Florida band teacher discussed virginity, premarital sex, and various sexual activities with his coed classes, the school board dismissed him and the court upheld the dismissal. In an opinion quite critical of a federal judicial trend toward permissiveness, the court stated that it was "still of the opinion that in-

structors in our schools should not be permitted to so risquely discuss sex problems in our teenage mixed classes."¹⁴

A Pennsylvania teacher's dismissal was upheld when it was proven that he called one of his students a slut and had implied to the class that the student was a prostitute. The court ruled that his language failed to foster and elevate the ideals and attitudes a teacher should develop in his students and that his conduct evidenced a moral failure in his own character.¹⁵

A California teacher who told his class that the school bell system "sounded like a worn-out phonograph in a whorehouse" and that the color of his classroom walls looked like someone had "peed on them and then smeared them with baby crap" was judged by the courts as being so vulgar that his fitness to teach was impaired.¹⁶ The court ruled that the teacher's vulgarity had reached the point where the effect on his fitness and ability to teach was sufficient to warrant his dismissal. On the other hand, the courts have generally ruled that when a teacher's use of sexual references or profanity does not "transcend his legitimate professional purpose,"¹⁷ the speech will be considered constitutionally protected and a dismissal based on this conduct will be overturned.

Privacy Rights as a Defense. The constitutional right to privacy cannot be claimed as a defense against dismissal if the conduct was of a public, bizarre, or flagrant nature. When the private conduct of a teacher becomes public knowledge or when the claim of privacy is applied to conduct that, in fact, is not private, the courts generally have held that the conduct is not protected from school board scrutiny by a right to privacy. For example, a Massachusetts teacher who took a mannequin to a spot on his front lawn under a street lamp and proceeded to undress it, caress it in a lewd fashion, and place it between his legs, claimed the board's dismissal violated his right to privacy. A federal court upheld the dismissal, ruling that "the right to privacy . . . may be surrendered by public display. The right to be left alone in the home extends only to the home and not to conduct displayed under the street lamp on the front lawn."¹⁸

An Oregon teacher claimed that his dismissal, which was based on publicized homosexual acts at an adult bookstore, violated his right to privacy. The court stressed that he "was not dismissed because of his sexual preference, but rather because of the manner and place in which he exercised that preference with the resultant notoriety surrounding his activities."¹⁹

A federal court in Illinois found unconvincing a teacher's argument that his right to privacy included publication in a swinger's magazine of a photograph showing him and a female companion nude from the waist up. The court ruled that the public nature of such a photograph made it

constitutionally permissible for the board to inquire into the moral character of the teacher.²⁰

A 1973 New York decision ruled that it was an error to assume that there is an absolute right to privacy. The court went on to provide instances where a teacher's right to privacy might be limited:

In our view what otherwise might be considered private conduct beyond the licit concern of school officials ceases to be such in at least either of two circumstances — if the conduct directly affects the performance of the professional responsibility of the teacher, or if, without contribution on the part of school officials, the conduct has become the subject of such public notoriety as to significantly or reasonably impair the capability of the particular teacher to discharge the responsibilities of his position.²¹

While immorality is the most frequently cited legislative cause for dismissal, its application and definition have generally been left to the courts. A major consideration for the judiciary is proof of a nexus between conduct and fitness to teach. Where this nexus is demonstrated by the board, the dismissal action has a greater chance of being sustained in the courts even when constitutional challenges to the dismissal are claimed.

Incompetence

A review of appellate court decisions rendered over the past 30 years reveals that the courts have permitted school boards to use a broad interpretation of incompetence. The conditions or behaviors that have successfully been applied to incompetence fall into four general categories: inadequate teaching, poor discipline, physical or mental disability, and counterproductive personality traits.

Since the courts have permitted a broad interpretation of incompetence, the critical factor in a successful dismissal is the evidence produced to substantiate the charges. The following evidentiary guidelines should be applied when considering the dismissal of a tenured professional employee on the grounds of incompetence.

1. A comparative standard of performance is applied by school boards where incompetence is alleged.

A teacher must be measured against a standard used for other teachers in a similar position, not against some hypothetical standard of perfection. A Nebraska school board decided to dismiss a physical education teacher who received good ratings in all areas except discipline and organization. In ruling for the teacher's reinstatement the Nebraska Supreme Court provided the following rationale: Incompetence is not measured in a vacuum, against a standard of perfection; it must be measured against the performance of others in a similar position.

Although the teacher's conduct may have been minimal, it was not incompetent, and there was no evidence that the teacher's conduct was below the standard of performance required of others. Finally, there was no expert testimony providing sufficient evidence of incompetence.²²

A similar rationale was applied in the reinstatement of a Tennessee kindergarten teacher. The newly assigned elementary principal, formerly an assistant junior high school principal, recommended that the teacher be dismissed due to her lack of classroom control. The principal had no prior exposure to kindergarten classrooms or training in this area. A state supervisor testified that, although more classroom structure was needed, the teacher was providing an adequate readiness program and was using acceptable teaching techniques. The Tennessee Supreme Court reinstated the teacher because of the lack of any persuasive testimony that the teacher's performance was ineffective or below the standards of efficiency maintained by other kindergarten teachers.²³

2. There should be substantial evidence to justify incompetence.

To determine whether there is substantial evidence, the courts have often applied the "reasonable man" test. This test poses the question: Would a reasonable man have reached the same decision upon examination of the record as a whole?

The record as a whole, rather than any single incident, should be used to establish substantial evidence. A discharged elementary principal argued that the 67 instances cited by the school board as the basis for its dismissal decision were no more than petty daily errors. However, the record as a whole provided substantial evidence to support the school board's decision, and it was the Minnesota Supreme Court's opinion that the dozens of errors attributed to the principal indicated that his problems exceeded those of petty daily errors.²⁴

Even testimony leading to inconsistent conclusions does not prevent a school board's dismissal decision from being supported if there is substantial evidence. An elementary principal was dismissed for deficiencies in teacher supervision, student discipline, decision making, and long-range planning. These problems were documented by two totally negative evaluations made by the superintendent. However, 34 teachers and many parents signed a letter of support, and a former superintendent wrote a letter attesting to the principal's leadership skills. Nevertheless, the Iowa Supreme Court found sufficient evidence on the record to support the findings of the school board.²⁵

3. School boards and administrators should document a pattern of incompetent behavior. (See Chapter 6.)

Most successful dismissals for incompetence are based on a pattern of behavior rather than a single critical incident. An Illinois teacher was dismissed for deficiencies in planning, lesson presentation, and class-

room discipline. The appellate court clarified that the momentary lapses in discipline or a single day's lesson gone awry is insufficient reason for a teacher's dismissal. However, if a pattern of unacceptable behavior is established, a dismissal will be upheld.²⁶

A Washington teacher was dismissed for unacceptable disciplinary practices. On one occasion the teacher kicked the leg of a student's chair causing the student to fall backward and strike his head on a table. The teacher's past record revealed other instances of improper discipline, and he had been notified of the consequences for repeated violations of district regulations. In upholding the teacher's dismissal, the court of appeals stated "sufficient cause for discharge may be evaluated in light of the teacher's record as a whole, which may be said to demonstrate a continuing pattern of unacceptable teaching practices."²⁷

4. School boards should ascertain whether the behavior in question is irremediable before terminating employment.

Under some state statutes, school boards must first decide if a charge is remediable or irremediable before making a dismissal decision. If a school board considers the charges remediable, then the teacher is entitled to a notice of the charges and a period of time to correct the unacceptable conduct. If the charges are considered irremediable, then dismissal proceedings can be initiated without the preliminary notice of charges and a remediation period. However, the determination of irremediability is subject to judicial review. Irremediable charges are those that could not have been corrected even if a warning had been issued or charges that have had a damaging effect on students, faculty, or school.²⁸

The dismissal decision of a New Mexico school board was overturned because it failed to show that the teacher's behavior was not correctable. The teacher on several occasions had violated the district's disciplinary policy, for example, hitting one student with a drumstick and kicking another student. However, the administrators failed to follow the conference procedure required by state statutes. In reinstating the teacher the court of appeals stated, "Although the situation was serious, the question remains: was it correctable? There is neither evidence nor finding that it was not, and no evidence that any effort was made at any conference to correct the teacher's unsatisfactory work performance."²⁹

An Illinois teacher was reinstated when the court disagreed with the school board's decision that the dismissal causes were irremediable. This physical education teacher had poor classroom discipline, presented disorganized lessons, and ridiculed awkward students. Since there was no evidence of irreparable damage to students, the court found the school board in error for not providing notice and an opportunity for remediation.³⁰

5. *In jurisdictions that require an effort at remediation, school boards must be sure that a reasonable period for remediation has been provided.*

A teacher of mentally handicapped students was dismissed for lack of instructional planning, lack of positive learning activities, and lack of cooperation with colleagues. A period of 15 school days lapsed between the notice to remedy and the last formal evaluation. An Illinois appellate court did not consider this a reasonable period for assessing improvement and stated further that an evaluation should have been made at the end of an agreed upon remediation period.³¹

In another case a high school English teacher was given notice to remedy her classroom discipline, communication skills, and record-keeping. After a lapse of five school weeks she received a formal evaluation and was dismissed. Statements from students, teachers, and the principal indicated that she was making an effort to improve. The Minnesota Supreme Court found this remediation period unreasonable and reinstated the teacher.³²

An Illinois elementary teacher was dismissed because of poor discipline and ineffective instruction. Over a remediation period of eight school weeks several administrators and supervisors observed the teacher and provided assistance. The teacher exhibited a defensive attitude toward suggestions for improvement and no progress was noticed in her performance. In this case the court found the remediation period reasonable and upheld her dismissal.³³

6. *School boards should seek to establish that an employee's conduct had an adverse effect on the efficient operation of the school.*

Historically, the courts have studied the administrative record to determine if there were sufficient facts to support the alleged inadequacies of the teacher and limited their review to the teacher's condition or conduct. However, during the past decade the courts have frequently asked school boards to support their charges of incompetence by also showing an adverse effect on the students, the teaching process, and the school in general.

A kindergarten teacher was dismissed for reasons related to her teaching philosophy, classroom discipline, and uncompromising attitude. However, the teacher was able to show that the achievement level of her students was equal to that of their peers. The Michigan Court of Appeals overturned the dismissal and tenure revocation decision of the school board and the state tenure commission with the following reasoning:

Because the essential function of a teacher is the imparting of knowledge and of learning ability, the focus of this evidence must be the effect of the questioned activity on the teacher's students. Secondly, the tenure revocation proceeding must determine how the teacher's activity affects other teachers and the school staff.³⁴

A mathematics teacher in Tennessee was dismissed for publicly expressing her hatred for blacks. She openly stated her feelings to the elementary school principal and his assistant, both of whom were black. As a result of her racial biases, she would often turn her head and look away when the principal attempted to speak to her. When assigned a black aide the teacher rejected her and failed to give her work to do. The court emphasized that the school board's interests in maintaining an efficient school system outweighed the teacher's First Amendment interest of free speech. The teacher's dismissal was upheld because her remarks and behavior had a detrimental effect on the school and community.³⁵

The dismissal of a Minnesota teacher was overturned because an adverse effect on the students could not be established. This third-grade teacher was suspended immediately for allegedly holding pins under the outstretched arms of a student until he admitted to throwing a crayon. Several factors contributed to the teacher's reinstatement. First, the school board had not considered the remediability of the teacher's conduct. This teacher had taught for 23 years with an unblemished record, and there was no written discipline policy in the school district. Second, there was no evidence of actual physical or psychological harm. No children in the class, including the disciplined student, expressed a fear of returning to her class nor did they report the incident to their parents.³⁶

The process of dismissing incompetent teachers is considerably more complicated than the application of a technical or legal definition. Nevertheless, school boards and administrators should not misinterpret the role of the judiciary as an obstacle to the dismissal process. The courts have been careful not to intrude upon the discretionary powers of school boards to determine a teacher's incompetence, and they have accepted a broad interpretation of this ground for dismissal. However, courts have required that a school board's findings be supported by substantial evidence and be in conformance with the employee's statutory and constitutional rights.

Insubordination

Insubordination is listed as a separate cause for the dismissal of teachers in the statutes of 21 states. Violation of school law and policy or good or just cause are often substituted for a charge of insubordination in a dismissal action when insubordination is not specifically listed as a cause for teacher dismissal in a state's school laws. Violation of school law or policy is listed as a separate cause for dismissal in 17 states. Good or just cause is specified in 28 states. Insubordination does not necessarily have to be cited as a part of state statute in order for courts to uphold a dismissal action for insubordination.

Regardless of statutory provisions, insubordination is a judicially ac-

ceptable cause for the dismissal of a teacher in all states. The U.S. Supreme Court affirmed the action of the Pennsylvania Supreme Court regarding the dismissal of a teacher who refused to answer his superintendent's questions regarding his loyalty. The Pennsylvania court supported the dismissal on the basis of incompetency. It reasoned that the teacher's lack of frankness and candor and insubordination made him incompetent. The U.S. Supreme Court indicated that "the Pennsylvania statute, unlike those of many other States, contains no catch-all phrase, such as conduct unbecoming a teacher, to cover disqualifying conduct not included within the more specific provisions. Consequently, the Pennsylvania courts have given incompetency a broad interpretation."⁷⁷ Judicially defined insubordination can be classified as follows: absence from duty, refusal to follow established procedures for classroom or nonclassroom activities, improper use of corporal punishment, improper grooming, refusal to sign loyalty oaths and to participate in loyalty-related activities, improper union activity, and criticism of authority.

Persistence of the Violation. Generally, school boards are required to demonstrate the presence of a persistent willful violation of a reasonable rule or order emanating from a proper authority in order to receive judicial affirmation for the dismissal of a tenured teacher. The Wyoming Supreme Court affirmed the dismissal for insubordination of a teacher who refused to accept a teaching assignment made by the principal. An industrial arts teacher was directed to teach a first-period welding class in one school and to teach the remainder of his schedule in another school located in the same district. Transportation was provided by the district and the teacher was certified to teach welding. The teacher was informed by the principal of his probable schedule several weeks prior to the start of school with the final schedule being confirmed at the beginning of the school term. The teacher reported to the first-period class as directed for the first four days of school. Thereafter, he repeatedly refused to report to class claiming that he was not properly prepared to teach welding, that materials were inadequate, and that he was not directed by the board or superintendent to teach welding. The court ruled the action to be insubordination by applying the following rationale:

1. Persistence: The action of the teacher was persistent in that he verbally refused the assignment and, in fact, failed to report for class as directed.
2. Willful: There was no misunderstanding or negligence; the teacher intended not to obey a direction that he fully understood.
3. Reasonable rule or order: Other teachers traveled between buildings, the teacher was certified in the subject, transportation

was provided, and the time for travel was sufficient. There was nothing unreasonable about the direction.

4. Proper authority: The board and superintendent properly delegated the authority of class assignments to the principal.³⁸

"Persistence" is often difficult to define. One view of persistence focuses on the intention of the teacher. For example, teachers may be dismissed for violation of rules regarding their attendance at school. The Maine Supreme Court affirmed the dismissal for insubordination of a teacher who absented herself from school despite the denial of her leave request. The teacher had made several requests and had announced her intention to disregard the board's denial of her leave request. She had no record of similar transgressions. The court reasoned that although there was no persistence of action, there was a persistence of intent. She intended to disobey and, despite opportunity to correct her action, she followed through with her insubordinate act.³⁹

The Connecticut Supreme Court defined persistence differently. The court ordered the reinstatement of a teacher who had absented herself from duty despite the denial of her leave request. In this case the teacher twice requested leaves of absence, and on both occasions the requests were denied. The Connecticut court ruled that a persistence of action had to be demonstrated in order to sustain a dismissal for insubordination. Since the act appeared in isolation, it was reasoned not to be sufficient to demonstrate persistence.⁴⁰

Willful Violation. Insubordinate acts must be willful in order to sustain dismissal actions. Unless a rule or directive prohibiting an action is clearly and properly communicated in an understandable form or is readily apparent in administrative-employee relationships, a dismissal action for insubordination is not possible. In general, if teachers are unaware of the presence of a rule or directive prohibiting certain kinds of behavior, courts will not judge them as being willfully insubordinate.

An Alabama appeals court upheld a school board's dismissal of a tenured guidance counselor for insubordination upon a review of evidence that established that the counselor refused to meet his assigned duty as a supervisor of children prior to the beginning of the school day. The supervision assignment was rotated among employees, but the counselor contended that counselors should be exempt from the duty. A formal reprimand was issued, which prompted the counselor to file a grievance. The grievance was sustained on procedural grounds, but the court, in considering the counselor's conduct, reached a decision that there was sufficient evidence of a willful refusal to obey a reasonable order to justify dismissal.⁴¹

Reasonable Orders from Acceptable Authorities. Statute law, regulation, policy, and practice often designate specific officials and administrative

bodies to make rules governing certain kinds of actions. For an action to be considered as insubordinate, the rule governing the action must come from an acceptable authority. Further, rules and orders must be reasonable both in design and application. If a teacher is able to demonstrate that a rule or order was capricious, arbitrary, or violative of constitutional rights, then courts may reverse the school board's dismissal decision.⁴²

Teachers can be compelled to follow reasonable directives in the operation of their classes. Rules or directives pertaining to corporal punishment and general classroom operation must be followed. In a corporal punishment case, the North Dakota Supreme Court ruled that written guidelines and administrative admonitions were sufficient to justify dismissal of a teacher who repeatedly used corporal punishment with his students. Written guidelines specified that corporal punishment is allowed only with the permission and under the supervision of the principal. On five occasions the teacher had slapped students' faces and pulled their hair despite being directed by the principal to discontinue such actions.⁴³

When considering a dismissal action for insubordination a school district must be sure that it is based on a legitimate school concern. In order to limit a teacher's use of a specific teaching method or kind of material, a school district must demonstrate the likelihood of a substantial or material interference with the operation of the school before grounds for insubordination can be established. Factors related to such a concern would include the age of the students,⁴⁴ the relationship of course material or teaching method to the subject of study, the kinds of materials or methods available in the general school curriculum and library,⁴⁵ expert opinion about the material or method, and the degree of interference or disruption the material or method may engender relative to the orderly operation of the school.⁴⁶

Substantial Evidence. School boards must demonstrate the existence of "substantial evidence" to support the dismissal of a teacher for insubordination. In demonstrating substantial evidence, courts apply the reasonable man test. If reasonable persons could agree that the evidence supported the charge of insubordination, the courts will accept the existence of substantial evidence to confirm charges of insubordination. Therefore, it is essential that dismissal for insubordination be based on verifiable fact and documentary evidence.⁴⁷

Nonclassroom Directives. Teachers can be required to follow nonclassroom directives that can be shown to bear a rational relationship to the functions of the school. Violations of valid regulations governing medical and psychological examinations, residency requirements, and requirements to confer privately with administrators have all resulted in

judicial affirmation of the dismissal of teachers. School boards are compelled to follow prescribed regulatory and statutory procedures affecting nonclassroom directives. For example, many states accept the right of a school board to enact regulations requiring teachers to reside in their district of employment. However, the New Hampshire Supreme Court declared an ordinance requiring district residency to be a violation of a teacher's fundamental constitutional rights.⁴⁹

The Mississippi Supreme Court ruled that a teacher's refusal to sign an attachment to a regular employment contract was sufficient to demonstrate insubordination. The attachment contained a statement, approved by the school board, indicating that the teacher agreed to follow the provisions of a newly enacted board policy manual. The provisions were explained at a teachers' meeting and all teachers, except the plaintiff, signed the attachment. The superintendent asked her to sign the attachment on several occasions. She refused. He finally wrote to her instructing her to sign the attachment or he would recommend her dismissal for insubordination. She still refused, and she was dismissed. The court affirmed the dismissal, reasoning that the teacher's persistent insubordinate refusal to sign the contract attachment was sufficient to warrant dismissal. The court rejected the teacher's contention that the dismissal action was arbitrary, capricious, and an abuse of the school board's discretion.⁵⁰

Uncooperative Behavior. Uncooperative behavior can serve as a cause for the dismissal of a teacher on grounds of insubordination. A charge of uncooperative behavior is usually characterized by a series of insubordinate acts, which may be combined with some other category of offense. The offenses may or may not be related to one another. Although a specific statutory cause for dismissal must be listed, a pattern of uncooperative behavior should be established. A single offense may not be sufficient to warrant dismissal action. A pattern of inappropriate actions on the part of a teacher carries more weight in judicial actions than single charges of uncooperative behavior.

A Massachusetts appellate court affirmed the dismissal of a teacher for incapacity, conduct unbecoming a teacher, and insubordination. The evidence presented showed that the teacher entered other teachers' classrooms on occasions, demanding materials and disrupting the normal operation of those classes; pushed a student in the presence of other students and confronted him with legal difficulties he was having outside of school; entered a classroom without the permission of the teacher and searched for teaching materials; and exhibited verbally abusive behavior toward the principal, a teacher aide, and the librarian. The court stated that the misdeeds taken in isolation were not very significant; however, when viewed in combination over a 12-month period, they were suffi-

cient to warrant discharge. The court concluded that the teacher's inability to cooperate and get along with her colleagues as evidenced by the series of incidents was sufficient to warrant dismissal.³⁰

Constitutional Protections. A teacher may not be dismissed for insubordination if the motivating reason for the dismissal was the exercise of behavior that is constitutionally protected. The teacher has the initial burden of proving that the challenged behavior was constitutionally protected. Once demonstrated, a school board must either demonstrate a compelling reason for the limitation of the protected behavior or demonstrate that, even in the absence of the protected behavior, other specified charges would have resulted in the teacher's dismissal.³¹

The United States Supreme Court has established a standard for a compelling reason to limit constitutionally protected behavior. A school board must demonstrate an actual disruption of the operation of the school to limit constitutionally protected behavior. Teachers may engage in unpopular constitutionally protected behavior without being dismissed from public employment.³² If a teacher engages in constitutionally protected behavior that is part of the cause for his or her dismissal, the dismissal can still be affirmed if the school board is able to demonstrate, by the preponderance of evidence, that the teacher would have been dismissed even in the absence of the protected behavior.³³

Insubordination is a frequently cited cause for the dismissal of teachers. Insubordinate behavior can lead to the dismissal of a teacher in all jurisdictions whether or not it is specifically listed in the statutes governing teacher dismissal. However, care must be taken to thoroughly document all charges. A documented series of inappropriate acts demonstrating a pattern of uncooperative behavior provides the strongest case for dismissal for insubordination. Further, all insubordination dismissal actions must provide evidence of a persistent, willful refusal to obey a reasonable rule or order emanating from a proper authority.

Footnotes

1. *Albert Appeal*, 92 A.2d 663, 664 (Pa. 1952).
2. *Denton v. South Kitsap School Dist.* No. 402, 516 P.2d 60, 65 (Wash. App. 1973).
3. *Pryse v. Yakima School Dist.* No. 7, 632 P.2d 60, 65 (Wash. App. 1982).
4. *Weissman v. Board of Educ. of Jefferson Cty. School Dist.* No. R-1, 547 P.2d 1267, 1274 (Colo. 1976).
5. *Moore v. Knowles*, 482 F.2d 1069, 1073 (5th Cir. 1973).
6. *Denton v. South Kitsap School Dist.* No. 402, 516 P.2d 1080, 1082 (Wash. App. 1973).
7. *Fisher v. Snyder*, 346 F. Supp. 396, 401 (D. Neb. 1973).
8. *Sullivan v. Meade Cty. Indep. School Dist.* No. 101, 387 F. Supp. 1237, 1247 (D. S.D. 1975).

9. *Morrison v. State Bd. of Educ.*, 461 P.2d 375, 382 (Cal. 1969).
10. *Id.* at 386.
11. *Chicago Bd. of Educ. v. Payne*, 430 N.E.2d 310, 315 (Ill. App. 1982).
12. *Jarvella v. Willoughby-Eastlake City School Dist. Bd. of Educ.*, 233 N.E.2d 143, 146 (Ohio C.P. 1967).
13. *Penn-Delco School Dist. v. Urso*, 382 A.2d 162, 167-68 (Pa. Commw. 1978).
14. *Pyle v. Washington Cty. School Bd.*, 238 So. 2d 121, 123 (Fla. App. 1970).
15. *Bovino v. Board of School Dir. of Indiana Area School Dist.*, 377 A.2d 1284, 1288 (Pa. Commw. 1977).
16. *Palo Verde Unified School Dist. v. Hensey*, 88 Cal. Rptr. 570, 572 (Cal. App. 1970).
17. *Mailoux v. Kiley*, 323 F. Supp. 1387, 1391 (D. Mass. 1971), *aff'd*, 448 F.2d 1242 (1st Cir. 1971).
18. *Wishart v. McDonald*, 500 F.2d 1110, 1113-14 (1st Cir. 1974).
19. *Ross v. Springfield School Dist. No. 19*, 641 P.2d 600, 608 (Ore. App. 1982).
20. *Weissbaum v. Hannon*, 439 F. Supp. 873, 879 (E.D. Ill. 1977).
21. *Jerry v. Board of Educ.*, 324 N.E.2d 106, 111 (N.Y. 1974).
22. *Sanders v. Board of Educ. of the South Sioux City Comm. School Dist. No. 11*, 263 N.W.2d 461 (Neb. 1978).
23. *Williams v. Pittard*, 604 S.W.2d 845 (Tenn. 1980).
24. *Lucan v. Board of Educ. and Indep. School Dist. No. 99*, 277 S.W.2d 524 (Minn. 1979).
25. *Briggs v. Board of Dir. of the Hinton Commun. School Dist.*, 282 N.W.2d 740, 743 (Iowa 1979).
26. *Board of Educ. of Minooka Comm'n. Consol. School Dist. No. 201 v. Ingeles*, 403 N.E.2d 277 (Ill. App. 1980).
27. *Sargent v. Selah School Dist. No. 119*, 599 P.2d at 29 (Wash. App. 1979).
28. *See, e.g., Gilliland v. Board of Educ. of Pleasant View Consol. School Dist. No. 622*, 365 N.E.2d 322 (1977).
29. *Morgan v. New Mexico State Bd. of Educ.*, 488 P.2d 1210, 1213 (N.M. App. 1971).
30. *Morris v. Board of Educ. of the City of Chicago*, 421 N.E.2d 387 (Ill. App. 1981).
31. *Board of Educ. of School Dist. No. 131 v. Illinois State Bd. of Educ.*, 435 N.E.2d 845 (Ill. App. 1982).
32. *Ganyo v. Independent School Dist. No. 832*, 311 N.W.2d 497 (Minn. 1981).
33. *Community Unit School Dist. No. 60 v. Maclin*, 435 N.E.2d 845 (Ill. App. 1982).
34. *Beebee v. Haslett Pub. Schools*, 239 N.W.2d 724, 728 (Mich. App. 1976), *rev'd on other grounds*, 278 N.W.2d 36 (Mich. 1979).
35. *Anderson v. Evans*, 660 F.2d 153 (6th Cir. 1981).
36. *Kroll v. Independent School Dist. No. 593*, 304 N.W.2d 338 (Minn. 1981).
37. *Beilan v. Board of Educ., School Dist. of Philadelphia*, 357 U.S. 399, 406 (1958).
38. *Board of Trustees of School Dist. No. 4 v. Colwell*, 611 P.2d 427, 434 (Wyo. 1980).

39. *Fernald v. City of Ellsworth School Comm.*, 342 A.2d 704 (Me. 1975).
40. *Tucker v. Board of Educ. of the Town of Norfolk*, 418 A.2d 933 (Conn. 1979).
41. *Jones v. Alabama Tenure Comm.*, 408 So. 2d 145 (Ala. Civ. App. 1981).
42. *Brown v. Portsmouth School Dist.*, 451 F.2d 1106 (1st Cir. 1971).
43. *Lithun v. Grand Forks Pub. School Dist. No. 1*, 307 N.W.2d 545 (N.D. 1981).
44. *See, e.g., Parducci v. Rutland*, 316 F. Supp. 352 (N.D. Ala. 1970).
45. *See, e.g., Burns v. Rovaldi*, 477 F. Supp. 270 (D. Conn. 1979).
46. *See, e.g., Nigosian v. Weiss*, 343 F. Supp. 757 (S.D. Mich. 1971).
47. *See, e.g., Briggs v. Board of Dir. of the Hinton Commun. School Dist.*, 282 N.W.2d 740 (Iowa 1979).
48. *Donnelly v. City of Manchester*, 274 A.2d 789 (N.H. 1971).
49. *Sims v. Board of Trustees*, 414 So. 2d 431 (Miss. 1982).
50. *Springgate v. School Comm. of Mattapoisett*, 415 N.E.2d 888 (Mass. App. 1981).
51. *See Chapter 3.*
52. *Tinker v. Des Moines Indep. Commun. School Dist.*, 393 U.S. 274 (1977).
53. *Mount Healthy City School Dist. Bd. of Educ. v. Doyle*, 429 U.S. 274 (1977).